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SUPREME COURT OF THE UNITED STATES.

No. 127.—October Term, 1926.

United States of America, Appellant, *vs.* The Chemical Foundation, Incorporated.	Appeal from the Circuit Court of Appeals for the Third Circuit.

[October 11, 1926.]

Mr. Justice Butler delivered the opinion of the Court.

Suit was brought by the United States in the District Court for Delaware to set aside sales made by it to the Chemical Foundation of a number of patents, copyrights, trademarks, and other similar properties—which for brevity will be referred to as "patents"—seized pursuant to the Trading with the Enemy Act of October 6, 1917, c. 106, 40 Stat. 411, as amended by the Act of March 28, 1918, c. 28, 40 Stat. 460, and the Act of November 4, 1918, c. 201, 40 Stat. 1020, and other Acts. The complaint alleges that a number of domestic manufacturers as a result of war conditions had been able to combine and monopolize certain chemical industries in this country; and, fearing that at the end of the war German competition would destroy the monopoly, they conspired to bring about transfers and sales of the patents at nominal prices to themselves or to a corporation controlled by them; that the patents so obtained would control the industries in question and perpetuate the monopoly, and that the sales were procured through the fraudulent deception of the President, the Alien Property Custodian, and other officials. The answer denies conspiracy and fraud and asserts that the transfers were made in good faith and pursuant to law and that they are valid. There was a trial at which much evidence was taken. The District Court dismissed the complaint (294 Fed. 300); and its decree was affirmed by the Circuit Court of Appeals. 5 F. (2d) 191. Both courts found that no unlawful scheme, combination or conspiracy was shown, and that there was no deception or fraud. The United States took an appeal under § 241, Judicial Code, and has applied

for a writ of certiorari under § 240. The decree of the Circuit Court of Appeals was entered March 26, 1925, prior to the taking effect of the Act of February 13, 1925, amending the Judicial Code. C. 229, 43 Stat. 936. Since this is not a case in which the decree of that court is made final by § 128, the United States had the right of appeal. The application for certiorari is therefore denied.

The chemical industries in question are closely related to the production of explosives, gases, and other things directly used in waging war as well as to the production of dyestuffs and medicines essential to the welfare of the people. At the outbreak of the war many necessary medicines and other substances as well as most of the dyestuffs used in this country were imported from Germany or were manufactured under patents owned by enemy Germans. The amount of such things here produced was small. Importations were hindered by the blockade and ceased when this country entered the war. To meet the demand numerous plants were developed and by 1919 chemicals, dyestuffs, medicines and the like were being produced here in large quantities. A number of associations of manufacturers were formed for the advancement of such industries; they included in their membership the producers of nearly all the dyestuffs and like chemicals made in this country. Mr. A. Mitchell Palmer was the Alien Property Custodian until he was appointed Attorney General, March 4, 1919. In order to protect the United States against enemy and foreign control of its chemical industries and to stimulate production here, he favored the seizure and sale of the patents in question. To that end a number of conferences were held between his representatives and those of the industries. The plan that was carried into effect was formulated under his direction.

In February, 1919, the Chemical Foundation was incorporated under the laws of Delaware. The certificate of incorporation discloses that it was created and empowered to purchase enemy-owned patents seized by the Custodian and to hold the "property and rights so acquired in a fiduciary capacity for the Americanization of such industries as may be affected thereby, for the exclusion or elimination of alien interests hostile or detrimental to the said industries, and for the advancement of chemical and allied science and industry in the United States"; to grant to the United States non-exclusive licenses to make, use and sell the inventions covered

by the patents, and also to grant like licenses, on equal terms and without advantage as between licensees, to American citizens and corporations under control of American citizens. The board of directors is authorized to prescribe the terms and conditions of such licenses. It may refuse to issue any license or may revoke any license granted by it. The corporation is required to enforce its rights and to protect the rights of its licensees. The authorized capital stock is $500,000 consisting of 5,000 shares of the par value of $100 each: 4,000 shares constitute non-voting preferred stock, the holders of which are entitled to a cumulative dividend of six per centum per annum, and 1,000 shares constitute the common stock, the holders of which are entitled to dividends not exceeding six per centum per annum after dividends on the preferred stock have been provided for. The preferred stock is subject to redemption at par plus accumulated dividends, if any, and after such redemption net earnings not needed for working capital "shall be used and devoted to the development and advancement of chemistry and allied sciences, in the useful arts and manufactures in the United States, in such manner as the board of directors may determine." The holders of the common stock have all the voting power. The certificate provides that, without the approval of the board of directors, stockholders may not sell any of their stock. The board of directors consists of three members. The executive officers are president, vice president, and a secretary and treasurer. The president and vice president are required to serve without pay. The shares of the Foundation were subscribed by those interested in the chemical and dye industries. But a voting trust agreement was made, pursuant to which all common stock was deposited with, and all voting power was vested in, five trustees. Directors and officers were chosen March 8, 1919. Francis P. Garvan, Douglas I. McKay and George J. Corbett were made directors and constituted the board. Mr. Garvan, then Alien Property Custodian, was elected president. Mr. McKay was elected vice-president, and Mr. Corbett secretary and treasurer. Otto T. Bannard and four others were made voting trustees. All the directors, officers and voting trustees were chosen by or in accordance with the direction of Mr. Palmer, given while he was Custodian.

The President, by executive order December 3, 1918, declared: "I hereby vest in Frank L. Polk all power and authority conferred

upon the President by the provisions of Section 12'' of the Trading with the Enemy Act as amended. Mr. Polk was then Counselor for the Department of State, but was not so described in the order. He made two orders dated respectively February 26, 1919 and April 5, 1919, to authorize the Custodian to sell at private sale to the Foundation without advertisement at such places and upon such terms and conditions as to the Custodian might seem proper all patents found to relate to the objects and purposes of the Foundation as expressed in its charter. These orders contained a statement of the reasons therefor in the public interest. Briefly they were: that the patents could not be sold to the best advantage at public sale after advertisement; that the Foundation had been incorporated to hold the patents as a trustee for American industries affected by the patents, to eliminate hostile alien interests and to advance chemical and allied industry in the United States, and that it was obligated to grant non-exclusive licenses upon equal terms to qualified American manufacturers and was empowered to grant free licenses to the United States; that the public interest would be best served by a wide use of the inventions, which most readily could be promoted by licenses which the Foundation was obligated to grant; that a private sale would prevent the patents from falling into the hands of purchasers unwilling or unable to use the inventions or who would use them for speculative purposes; that it would be impossible to make a public sale that would secure these benefits, and that a private sale would avoid unnecessary expense, delay and inconvenience.

Prior to and contemporaneously with the organization of the Foundation, the representatives of the chemical industries cooperated with those of the Custodian in making lists of the patents to be seized and sold by the Custodian to the Foundation. Mr. Garvan, the Custodian, from time to time commencing April 10, 1919, executed and delivered to the Foundation various assignments of the patents. The considerations paid by the Foundation to the Custodian amounted in all to $271,850.00. The President, February 13, 1920, made an executive order which was held by both courts below to constitute a ratification of the transactions. And pursuant to that order, the Custodian confirmed the assignments theretofore made.

We come to the question whether, as held below, the Act as amended March 28, 1918, empowered the President to authorize,

and the Custodian under his supervision to consummate, these sales.

The pertinent provisions of the Act are in § 12 as amended. "The alien property custodian shall be vested with all of the powers of a common-law trustee in respect of all property, other than money, which has been or shall be, or which has been or shall be required to be, conveyed, transferred, assigned, delivered, or paid over to him in pursuance of the provisions of this Act, and, in addition thereto, acting under the supervision and direction of the President, and under such rules and regulations as the President shall prescribe, shall have power to manage such property and do any act or things in respect thereof or make any disposition thereof or of any part thereof, by sale or otherwise, and exercise any rights or powers which may be or become appurtenant thereto or to the ownership thereof in like manner as though he were the absolute owner thereof: *Provided*, That any property sold under this Act, except when sold to the United States, shall be sold only to American citizens, at public sale to the highest bidder, after public advertisement of time and place of sale which shall be where the property or a major portion thereof is situated, unless the President stating the reasons therefor, in the public interest shall otherwise determine: . . . . [40 Stat. 460].

"After the end of the war any claim of any enemy or of an ally of enemy to any money or other property received and held by the alien property custodian or deposited in the United States Treasury, shall be settled as Congress shall direct: . . ." 40 Stat. 424.

It is conceded that when seized the patents belonged to enemy Germans and that they were lawfully taken over by the Custodian. The purpose of the Trading with the Enemy Act was not only to weaken enemy countries by depriving their supporters of their properties, (*Miller* v. *Robertson*, 266 U. S. 243, 248) but also to promote production in the United States of things useful for the effective prosecution of the war. Section 10(c) authorized the President, if he deemed it for the public welfare, to grant licenses to American citizens or corporations to use any inventions covered by enemy-owned patents. Subsection (c) of § 7 of the Act as amended November 4, 1918 authorized the seizure of enemy-owned patents and provided that all property so acquired should be held and disposed of as provided by the Act. And there is no ground

for contending that the seizure and transfers did not tend to lessen enemy strength and to encourage and safeguard domestic production of things essential to or useful in the prosecution of the war. There is nothing to support a strict construction of the Act in respect of the seizure and disposition of enemy property. On the other hand, contemporaneous conditions and war legislation indicate a purpose to employ all legitimate means effectively to prosecute the war. The law should be liberally construed to give effect to the purposes it was enacted to subserve.

As originally enacted, § 12 gave the Custodian in respect of properties in his possession "all of the powers of a common-law trustee". He was authorized, acting under the supervision and direction of the President and under rules and regulations prescribed by the President, to manage the property and do any act or things in respect thereof or make any disposition of it by sale or otherwise and to exercise any rights appurtenant to its ownership "if and when necessary to prevent waste and protect such property and to the end that the interests of the United States in such property and rights, or of such person as may ultimately become entitled thereto, or to the proceeds thereof, may be preserved and safeguarded." The Custodian was a mere conservator and was authorized to sell only to prevent waste. But brief experience made it clear that this restriction on the power to dispose of enemy property sometimes operated to defeat the purpose of the Act and brought profit and advantage to the enemy. The amendment of March 28, 1918, eliminated the restriction upon the power of sale. It stated that the other powers given were "in addition" to those of a common-law trustee. And it authorized the Custodian under the President to dispose of such properties by sale or otherwise "in like manner as though he were the absolute owner thereof".

There is no support for a construction that would restrain the force of the broad language used. Congress was untrammeled and free to authorize the seizure, use or appropriation of such properties without any compensation to the owners. There is no constitutional prohibition against confiscation of enemy properties. *Brown* v. *United States*, 8 Cranch 110, 122; *Miller* v. *United States*, 11 Wall. 268, 305, *et seq.*; *Kirk* v. *Lynd*, 106 U. S. 315, 316; *Stoehr* v. *Wallace*, 255 U. S. 239, 245; *White* v. *Mechanics Securities Corp.*, 269 U. S. 283, 300. And the Act makes no provision for compensation. The former enemy owners have no claim against

the patents or the proceeds derived from the sales. It makes no difference to them whether the consideration paid by the Foundation was adequate or inadequate. The provision that after the war enemy claims shall be settled as Congress shall direct conferred no rights upon such owners. Moreover the Treaty of Berlin prevents the enforcement of any claim by Germany or its nationals against the United States or its nationals on account of the seizures and sales in question.*

While not denying the power to confiscate enemy properties, the United States argues that as construed below the provision in question is unconstitutional because it attempts to delegate legislative power to the Executive. But the Act gave the Custodian, acting under the President, full power of disposition. No restriction was put upon dispositions other than by sales. And sales to the United States were not regulated. The general rule laid down was that all dispositions by sale or otherwise should be made in accordance with the determinations of the President; the proviso made an exception including a class of sales; and, upon the failure of the President otherwise to determine stating the reasons therefor in the public interest, it required that such sales should be made as there specified. It was not necessary for Congress to ascertain the facts of or to deal with each case. The Act went as far as was reasonably practicable under the circumstances existing. It was peculiarly within the province of the Commander-in-Chief to know the facts and to determine what disposition should be made of enemy properties in order effectively to carry on the war. The determination of the terms of sales of enemy properties in the light of facts and conditions from time to time arising in the progress of war was not the making of a law; it was the application of the general rule laid down by the Act. When the plenary power of Congress and the general rule so established are regarded, it is manifest that a limitation upon the excepted class is not a delegation of legislative power. *Field* v. *Clark*, 143 U. S. 649, 692; *Buttfield* v. *Stranahan*, 192 U. S. 470, 496; *Union Bridge Co.* v. *United States*, 204 U. S. 364, 377; *United States* v. *Grimaud*, 220 U. S. 506, 516.

The language of the statute is too plain to be misunderstood. Except as affected by the proviso, the Custodian's dominion over

*Part X, Section IV, Article 297, and Annex paragraphs 1 and 3, Treaty of Versailles, adopted by Article II(1), Treaty of Berlin, 42 Stat. 1939, 1943.

the property and power to dispose of it—acting under the Preside as provided—were as unlimited as are the powers of an absolu owner; and the power of the President to determine terms a conditions of sales or other disposition was not restricted. He w authorized, stating the reasons therefor in the public interest, dispense with any or all requirements specified in the proviso a to substitute others for them. Cf. *Levinson* v. *United States*, 2 U. S. 198. When the amended section is read in compariso with the original enactment and regard is had to the chemical wa fare and other conditions existing at the time of the amendmer March 28, 1918, the inevitable conclusion is that it empowered t President to authorize, and the Custodian acting under him to co summate, the sales in question.

The United States argues that the executive order of Decer ber 3, 1918 was void, and that the one of February 13, 19 did not authorize or ratify the transactions.

Section 5 (a) of the Act provides that "the President m exercise any power or authority conferred by this Act through su officer or officers as he shall direct." The language of the exec tive order is: "I hereby vest in Frank L. Polk all power a authority conferred upon the President by the provisions of Sectio 12 . . ." Obviously all the functions of his great office cann be exercised by the President in person. The contention that pow to determine how enemy property should be sold could not delegated to another is not sustained. This court has had occasio to consider a like question in *Central Trust Co.* v. *Garvan*, 254 U. 554, 567; *Stoehr* v. *Wallace*, *supra*, 244, and *Commercial Tru Co.* v. *Miller*, 262 U. S. 51, 53. These decisions sustain the deleg tion here involved.

It is argued that the order was not made in conformity wit the statute because to "vest" power in another is not to "a through" him, and because the order did not show that Mr. Pol was an officer. But, if two constructions are possible, and one o them would render the order useless and the other give it validity the latter is to be adopted. Cf. *Panama R. R. Co.* v. *Johnso* 264 U. S. 375, 390; *United States* v. *Coombs*, 12 Pet. 72, 75-7 The intention to exert the power conferred under § 5 is plain Meticulous precision of language was not necessary. *Russell Co.* v *United States*, 261 U. S. 514, 523. While the use of the wor "vest" was not accurate, it must be deemed sufficient when th

context and circumstances are considered. Mr. Polk was an officer through whom the President was authorized to act. He was Counselor for the Department of State, appointed by the President and confirmed by the Senate. *United States* v. *Germaine*, 99 U. S. 508. No particular form of designation was required. It would be unreasonable to read the order otherwise than as meaning that, in respect of the matters covered by § 12, the President determined to act through Frank L. Polk, Counselor for the Department of State.

And the validity of each of the orders made by Mr. Polk is attacked by the United States on the ground that it was too broad and constituted an attempt to give to the Custodian the very power granted to the President by the Act; that is, the power to determine that enemy properties should be disposed of otherwise than as specified in the proviso. But the contention cannot prevail. Each of the orders sufficiently described the patents seized and authorized a private sale to the Foundation without advertisement. This was enough to indicate a determination to take these sales out of the class covered by the proviso. And it is insisted that the orders were induced by misrepresentation and were made without knowledge of the material facts. But both courts found that the United States failed to establish any conspiracy, fraud or deception alleged. Findings of fact concurred in by two lower courts will not be disturbed unless clearly erroneous. *Washington Sec. Co.* v. *United States*, 234 U. S. 76, 78. Under this rule the findings must be accepted. The presumption of regularity supports the official acts of public officers and, in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties. *Confiscation Cases*, 20 Wall. 92, 108; *United States* v. *Page*, 137 U. S. 673, 679-680; *United States* v. *Nix*, 189 U. S. 199, 205. Under that presumption, it will be taken that Mr. Polk acted upon knowledge of the material facts. The validity of the reasons stated in the orders, or the basis of fact on which they rest, will not be reviewed by the courts. *Dakota Cent. Tel. Co.* v. *South Dakota*, 250 U. S. 163, 184; *Monongahela Bridge* v. *United States*, 216 U. S. 177, 195; *Martin* v. *Mott*, 12 Wheat. 19, 30. Cf. *Levinson* v. *United States*, *supra*, 201.

We agree with the lower courts that the sales and transfers of the patents were ratified and confirmed by the President's order of February 13, 1920. It is urged that there was no ratification be-

cause it is not shown that the President had knowledge of the m terial facts; that he did not intend to ratify the sales of patent and that the language used in the order is not broad enough to i clude the patents, trademarks and copyrights in question.

The Polk order of February 26, 1919, described the propert covered as "all of the letters patent, trade-marks and rights unde letters patent and trade-marks, including all profits and damage . . . for the past infringement thereof which the Alien Prop erty Custodian may seize or may have seized . . . and whic he from time to time shall determine relate to the objects and pur poses" of the Chemical Foundation. The President's order o confirmation recites that the Polk orders authorized the Custodia to sell "certain choses in action and rights, interests and benefit heretofore determined to belong to, or to be held for, by, or o account of, or for the benefit of persons heretofore determined to b enemies." The language last quoted was used to define the sam properties that were covered by the Polk orders. That is, "chose in action and rights", etc., were used to include "letters patent trademarks", etc. The President's order also states that it was the *intention* of the Polk orders to authorize the Custodian to sell "all choses in action, rights, interests and benefits under agreements and rights and claims of every character and description including rights to receive moneys by way of royalties or otherwise as compensation for the use of patents, trademarks or tradenames which the Alien Property Custodian may have seized . . . and . . . determined to relate to the objects and purposes" of the Foundation. It recites that doubt had arisen as to the authority of the Custodian to sell and convey to the Foundation "certain of the said choses in action", etc., "including rights to receive moneys by way of royalties or otherwise." And the President expressly authorized the Custodian to sell at private sale without public or other advertisement to the Foundation upon such terms and conditions as to the Custodian might seem proper "all choses in action, rights, interests and benefits under agreements and rights and claims of every character and description which the Alien Property Custodian may seize or may have seized" under the Act. The President further authorized the Custodian by a suitable instrument to confirm and ratify sales theretofore made by him of any property as to which his authority under the Polk orders might be deemed doubtful. And he stated that his reasons for the deter-

mination and order were given in the Polk orders and in addition specified other reasons which need not be quoted.

This order authorizes sales of the patents to be made and ratifies and confirms those theretofore made by the Custodian. The President will be presumed to have known the material facts and to have acted in the light of them. His intention to ratify the sales is plain. The comprehensive language used is broad enough to include the patents. Moreover the statement that his reasons for the determination are given in the Polk orders shows the intention to cover the properties there referred to. As the transactions in question were ratified, it is unnecessary to consider the objections made by the United States to the procedure of the Custodian under the Polk orders.

The United States contends that the sales were void because made in violation of § 41 of the Criminal Code, 35 Stat. 1088, 1097, and the rule of law forbidding sales by a public officer or fiduciary of trust property in his custody to himself or to a corporation of which he is the head.

Section 41 provides: "No officer or agent of any corporation . . . and no . . . person directly or indirectly interested in the pecuniary profits or contracts of such corporation . . . shall be employed or shall act as an officer or agent of the United States for the transaction of business with such corporation . . ." Violators are made punishable by fine and imprisonment. The United States lays much stress on these facts: Mr. Garvan, while director of the bureau of investigation, Joseph H. Choate, Jr., chief of the chemical division of that bureau, and Ramsey Hoguet, patent attorney for the Custodian, conferred with the representatives of the chemical industries to arrange to make the seizures and sales of the patents. Later, Mr. Garvan, then Custodian, acted for the United States in making the transfers to the Chemical Foundation of which he was the President. Mr. McKay and Mr. Corbett were directors and officers appointed by the Custodian of various corporations of which he had taken control. Before the transfers were made, Mr. Choate became the general counsel and Mr. Hoguet the patent attorney of the Foundation. Mr. Bannard and the other voting trustees were members of the Advisory Sales Committee —appointed by the President to see that sales of enemy properties were fairly made to qualified buyers. Without further referenece to the facts relied on to support its contention, we assume in favor

of the United States that those who acted for it in the transactions complained of were at the same time directors and officers of the corporation; that the members of the Advisory Sales Committee, while they were voting trustees, participated in the fixing of the prices paid for the patents by the Foundation, and that such prices were much less than the value of the properties and would have been inadequate to constitute just compensation if the patents belonged to non-enemy owners and were taken for public use under the power of eminent domain.

Section 41 was enacted when there was no war, and long before the Trading with the Enemy Act. It lays down a general rule for the protection of the United States in transactions between it and corporations and to prevent its action from being influenced by anyone interested adversely to it. It is a penal statute and is not to be extended to cases not clearly within its terms or to those exceptional to its spirit and purpose. *United States* v. *Noveck*, — U. S. —; *Baender* v. *Barnett*, 255 U. S. 224, 226; *Hawaii* v. *Mankichi*, 190 U. S. 197, 212; *United States* v. *Kirby*, 7 Wall. 482, 486; Bishop on Statutory Crimes (3d ed.), § 235. At the time of the enactment, there were no enemy properties to be dealt with; and, save the generality of the language used, there is nothing to indicate a legislative purpose to deal with that subject. The Trading with the Enemy Act is a war measure covering specifically, fully and exclusively the seizure and disposition of enemy properties. The authority of the President to authorize sales and to determine terms and conditions in lieu of those specified in the proviso undoubtedly included the power to cause the Chemical Foundation to be incorporated to purchase and hold the patents as specified and to direct the selection of the directors, officers and voting trustees. The President, and under him the Custodian, acting for the United States, the seller of the patents, caused the Foundation to be created to buy and hold them and caused it to to be controlled by officers or representatives of the United States acting exclusively in its interest. Neither Mr. Garvan nor any of the others who acted for the United States had any financial interest in the Foundation, its profits or its contracts. All the corporate shares were subscribed and paid for by others—those interested in the chemical industries. They furnished the money to carry out the plan formulated by or under the direction of Mr. Palmer while he was Custodian. Under the voting trust agreement,

reholders were divested of all voice in the control, business affairs of the corporation. All shares are to be held by the ing trustees for 17 years, within which all patents will expire. d by charter provisions dividends were limited to six per centum annum. Transferable certificates of beneficial interest were ued by the trustees to the shareholders, but these cannot be used control the corporation. The arrangement was intended to ount to a public trust for those whom the patents will benefit d for the promotion of American industries, and to give to them right to have on equal and reasonable terms licenses to make, use l sell the inventions covered by the patents. The Foundation is perly to be considered an instrumentality created under the di- tion of the President to effect that disposition and subsequent ntrol of the patents which he determined to be in the public inter- . The transactions complained of did not involve any of the evils ned at by § 41. The Act will be construed and applied as not alified or affected by that provision of the Criminal Code. *Utah wer & Light Co.* v. *United States*, 243 U. S. 389, 406; *Kepner* v. *ited States*, 195 U. S. 100, 125; *Townsend* v. *Little*, 109 U. S. 504, 2; *In re Rouse, Hazard & Co.*, 91 Fed. 96, 100. And, as the power dispose of the properties by sales on the terms and conditions ecified was included in the grant made by the statute, it follows at the rule in respect of sales of trust properties by fiduciaries es not apply.

Before the commencement of the trial, the District Court und that it was necessary that the testimony be taken down in orthand and transcribed, and appointed an official stenographer r that purpose; and it was ordered that his fees be ultimately xed as a part of the costs. By another order, counsel consenting, e court directed that the expense of printing 100 copies of the anscript, to be available for use in that court and on appeal, be lvanced from time to time and borne in equal amounts by the rties and form a part of the taxable costs. The decree directs at the Chemical Foundation recover from the United States the oney advanced by the Foundation on account of such fees and penses, and orders the amount to be taxed as costs in the case. he government insists that this is erroneous.

The general rule is that, in the absence of a statute directly thorizing it, courts will not give judgment against the United tates for costs or expenses. *United States* v. *Hooe*, 3 Cranch 73,

91, 92; *Shewan and Sons* v. *United States*, 267 U. S. 86; *United States* v. *Davis*, 54 Fed. 147, 152, *et seq.* But the Foundation insists that under Equity Rule 50, taken with the consent of counsel and the orders, the court was authorized to direct that these items be taxed as costs and to give judgment against the United States therefor.

Equity Rule 50 in general terms provides that stenographers' fees shall be fixed by the court and taxed as costs, but it does not specify costs or judgment for money against the United States. The rule does not mention the United States and does not affect the sovereign prerogative not to pay costs. Congress alone has power to waive or qualify that immunity. But no statute authorizes the giving of judgment against the United States for these items or authorizes the Attorney General or other counsel in the case to consent to such a judgment. No such authority is necessary for the proper conduct of litigation on behalf of the United States, and there is no ground for implying that authority. It follows that the direction for judgment against the United States for costs cannot be sustained. That part of the decree will be eliminated; and the decree, so modified, will be affirmed.

Decree modified and affirmed as modified.

Mr. Justice SUTHERLAND and Mr. Justice STONE took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.